

RE CHANG CHENG HOE & ORS.

[R.Cr.J. (Ong Hock Sim J.) June 17, 1966]

[Penang — Criminal Revision No. 6 of 1966]

Criminal Law and Procedure — Acquittal and discharge — Defendant agreeing to compounding charge on terms — Criminal Procedure Code (Cap. 21), ss. 290, 317 & 448.

Criminal Law and Procedure — Plea of guilty — Necessity to pass sentence according to law — Criminal Procedure Code (Cap. 21), s. 82(m) (ii).

Merchandise Marks Ordinance, 1950, ss. 12 & 30 — Compounding of offence.

The defendants had been charged for an offence under section 12 of the Merchandise Marks Ordinance. At the hearing, counsel for defendants informed the court that the three defendants were agreeable to compounding the case under section 30 of the Ordinance, on certain terms, which included that the defendants should plead guilty and that the prosecution should not press for a deterrent sentence. Accordingly the defendants pleaded guilty, the facts were given and the defendants were acquitted and discharged.

Held: (1) the procedure adopted in this case was not that which should be done where it is intended to compound a case. The practice is for the prosecutor to apply to the court for permission to compound the case or to inform the court that the parties have come to a settlement;

(2) as the defendants had pleaded guilty, the magistrate was bound under section 182(m) (ii) of the Criminal Procedure Code to pass sentence according to law: the order of acquittal and discharge is contrary to section 182(m) (ii) of the Criminal Procedure Code and is further not authorised under section 30(4) of the Merchandise Marks Ordinance, which merely says that the compounding, if allowed, should have the effect of an acquittal, so that if proceedings should be subsequently instituted upon the same facts the defendants could plead "autrefois acquit";

(3) in the circumstances the order of acquittal and discharge must be set aside and instead the defendants bound over under section 290 of the Criminal Procedure Code to be of good behaviour for one year.

Per Ong Hock Sim J.: "I was not a little surprised to find on the record words to the effect that the three defendants were agreeable to compounding the charge on certain terms as the person competent to compound the charge is not the offending party but the party injured. One of the terms was that the prosecution was not to press for a deterrent sentence. This seems to me beyond the competence of the prosecution and is an affront to the court and further displays a most unhealthy trend, if this bargaining process is being employed to determine the course of proceedings."

CRIMINAL REVISION.

Haji Suhaimi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the Public Prosecutor.

Eugene Khoo for the defendants.

Ong Hock Sim J.: The learned magistrate at Butterworth has stated this case for the consideration of the High Court in accordance with section 317 of the Criminal Procedure Code (S.S. Cap. 21) on the question of law, namely (1) whether the terms and the circumstances of the case permitted his making an order of acquittal and discharge of the defendants under

A section 30(4) of the Merchandise Marks Ordinance, 1950, and (2) whether such acquittal and discharge was correct in law and what should be done in the premises.

The defendants had been charged at the magistrate's court, Butterworth as follows:

B "You are jointly charged that you on 12th day of November, 1964 at about 3.00 p.m., at No. 3885 Main Road, Permatang Pauh, Butterworth, Province Wellesley in the State of Penang did have in your possession for the purpose of trade 1,452 packets of Violet Talcum Powder with a counterfeit trade mark, to wit, the words 'Sang Moy Talcum Powder' in Chinese characters and the 'Two Sisters' mark affixed to the said goods and that you have thereby committed an offence punishable under section 12 of the Merchandise Marks Ordinance 10 of 1950."

C At the outset of the hearing, counsel for the defendants informed the court that the three defendants were agreeable to compounding the charge under section 30 of the Merchandise Marks Ordinance No. 10 of 1950, subject to the consent of the court, on certain terms which had been settled by the parties concerned. He then set out the said terms, which were:

- (1) All three defendants plead guilty;
- (2) Prosecution not to press for deterrent sentence;
- (3) Defendants undertake not to misbehave again;
- (4) Forfeiture of goods to police for destruction;

E and which terms having been confirmed by the prosecuting officer, the court consented to the compounding.

F I was not a little surprised to find on the record words to the effect that the three defendants were agreeable to compounding the charge on certain terms as the person competent to compound the charge is not the offending party but the party injured. One of the terms was that the prosecution was not to press for a deterrent sentence. This seems to me beyond the competence of the prosecution and is an affront to the court and further displays a most unhealthy trend, if this bargaining process is being employed to determine the course of proceedings. In this case, there was also a misunderstanding as to who the actual complainant is in this case. The prosecution was instituted by the police and they appear on the charge sheet as the complainant but it is clear that the person who lodged the report was the person who negotiated the terms of the settlement with the defendants. The deputy public prosecutor's agreement to this compounding was not obtained before this was done.

The charge was read and explained to the three defendants who pleaded guilty. The facts were given and the defendants, admitting them,

were acquitted and discharged, this order purported to be made under section 30(4) of the Merchandise Marks Ordinance. Section 30 deals with compounding and while sub-section (4) states that compounding shall have the effect of an acquittal and discharge, it does not afford a legal foundation for the order made by the learned magistrate. The procedure adopted in this case is not that which is done where it is intended to compound a case. The practice has been for the prosecutor to apply to the court where the permission of the court is required or in other cases to inform the court that the parties have come to a settlement. No plea is recorded and the case is struck out. Where a plea is taken and the facts admitted the magistrate is bound under section 182(m) (ii) of the Criminal Procedure Code to pass sentence according to law. He may where there are extenuating and mitigating factors not record a conviction but he cannot acquit. With respect to the learned magistrate, I do not agree that there can ever be such a thing as "a qualified and not an unequivocal plea of guilt". I think the learned magistrate misdirected himself when he says "obviously the prosecution could not press for a deterrent sentence." It is not the usual practice anywhere for the prosecution to press for a deterrent sentence except in exceptional circumstances in the public interest to invite the court to consider imposition of a deterrent sentence. What is obvious here is that the prosecution had not ascertained whether the spurious product of the defendants contained any matter which is injurious to the skin. It is also not known whether the defendants had any previous convictions under the Merchandise Marks Ordinance as these offences are registrable under the Registration of Criminals Ordinance, 1948 (See L.N. 157 of 1951). The offence the defendants are charged with, namely under section 12 is registrable and that section makes the defendants guilty upon proof of possession unless:

(a) that, having taken all reasonable precautions against committing an offence under this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark; and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(b) that otherwise he had acted innocently.

There is no mention of any assistance which has been rendered to the police. There is no question of the defendants having acted innocently (in fact, one of the terms of settlement is an undertaking not to misbehave). All these are matters which the court should have regard to in consenting to the compounding, and particularly if the public interest is affected. I would however say that it should be left to the discretion and good sense of the courts to have regard to the interests of both of the public and the

parties, the circumstances and the nature of the offence in deciding whether to allow a case to be compounded. No question of law is therefore involved in the first question "whether the terms and the circumstances of the case permitted his making an order of acquittal and discharge of the defendants under section 30(4) of the Merchandise Marks Ordinance" as that invites me to lay down a general rule depending upon particular terms and facts. One thing is clear in law that the order of acquittal and discharge is contrary to section 182(m) (ii) of the Criminal Procedure Code and is further not authorised under section 30(4) of the Merchandise Marks Ordinance, which merely says that the compounding, if allowed, shall have the effect of an acquittal, so that if proceedings should be subsequently instituted upon the same facts, the defendants could plead "*autrefois acquit*".

Before, however, I reverse the determination and set aside the order of acquittal and discharge, I would invoke sections 448 and 166 of the Criminal Procedure Code and amend the charge by substituting "3rd day of December, 1964" for the "12th day of November, 1964" and also by inserting before the words "Violet Talcum Powder" the word "Spurious". The respondents were represented and counsel agrees that they had not been misled by the error in stating the charge. I direct the charge as amended to be read to the respondents. They maintain the plea of guilty.

I convicted the defendants upon the charge as amended upon their own pleas of guilty. The order of acquittal and discharge made by the learned magistrate is hereby set aside. I bind them over in the sum of \$500 each on his/her own surety to be of good behaviour for one year under section 290 Criminal Procedure Code. The order of forfeiture made under section 28(4) by the learned magistrate is altered to read under section 435 of the Criminal Procedure Code. There will also be an order for the disposal of the boxes and cellophane seized by the police.

Order accordingly.

BAN PET HOCK v. ONG AH HO

[O.C.J. (Choor Singh J.) November 4, 1966]

[Singapore — Suit No. 2150 of 1964]

Damages — Damages for personal injuries sustained in road accident — Whether interest should be allowed — Civil Law Ordinance (Cap. 24), s. 8.

In this case the plaintiff obtained damages for personal injuries suffered by him when he was knocked down by a lorry driven by the defendant. Counsel for the plaintiff applied under section 8 of the Civil Law Ordinance for interest on the sum awarded from the date of the accident till the date of judgment.

Held: on principle interest should not be allowed when damages are awarded in running-down cases.